



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
ST. PAUL DISTRICT OFFICE  
332 MINNESOTA STREET SUITE E1500  
ST. PAUL MINNESOTA 55101

MVP

April 2, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the “Revised Definition of ‘Waters of the United States’”; (88 FR 3004 (January 18, 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (8 September 2023) ,<sup>1</sup> MVP-2025-00216-BJL MFR 1 of 1.<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army (“the agencies”) published the “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”). On September 8, 2023, the agencies published the “Revised Definition of ‘Waters of the United States’; Conforming”, which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) (“*Sackett*”).

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the 2023 Rule as amended,

---

<sup>1</sup> While the Revised Definition of “Waters of the United States”; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00216-BJL

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

## 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland 2, 0.11-acre, non-jurisdictional.
  - ii. Wetland 3, 0.09-acre, non-jurisdictional.
  - iii. Wetland 4, 0.02-acre, non-jurisdictional.

## 2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

## 3. REVIEW AREA.

- a. Project Area Size (in acres): 5.30-acres
- b. Location Description: The project/review area is located in Section 21, Township 06N, Range 08E, Dane County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 42.974180 Longitude: -89.550740
- d. Nearest City or Town: Verona
- e. County: Dane
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00216-BJL

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>6</sup>

N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

N/A

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup>

N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

---

<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>7</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>8</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00216-BJL

- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</sup>

N/A

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetlands 2, 3, and 4 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. The 7278 Valley Road, Verona, WI 53593, Helianthus Wetland Delineation Report, dated March 25, 2022, indicates that all 3 wetlands are depressional features on a concave hillslope lacking a surface connection to any downstream surface water. A desktop review of the USGS topographic map, National Hydrography Dataset (NHD) layer, Wisconsin Wetland Inventory, LiDAR elevation data, and Google Earth aerial imagery indicate that Wetlands 2, 3, and 4 are depressional wetlands, surrounded by upland. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform.

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

MVP

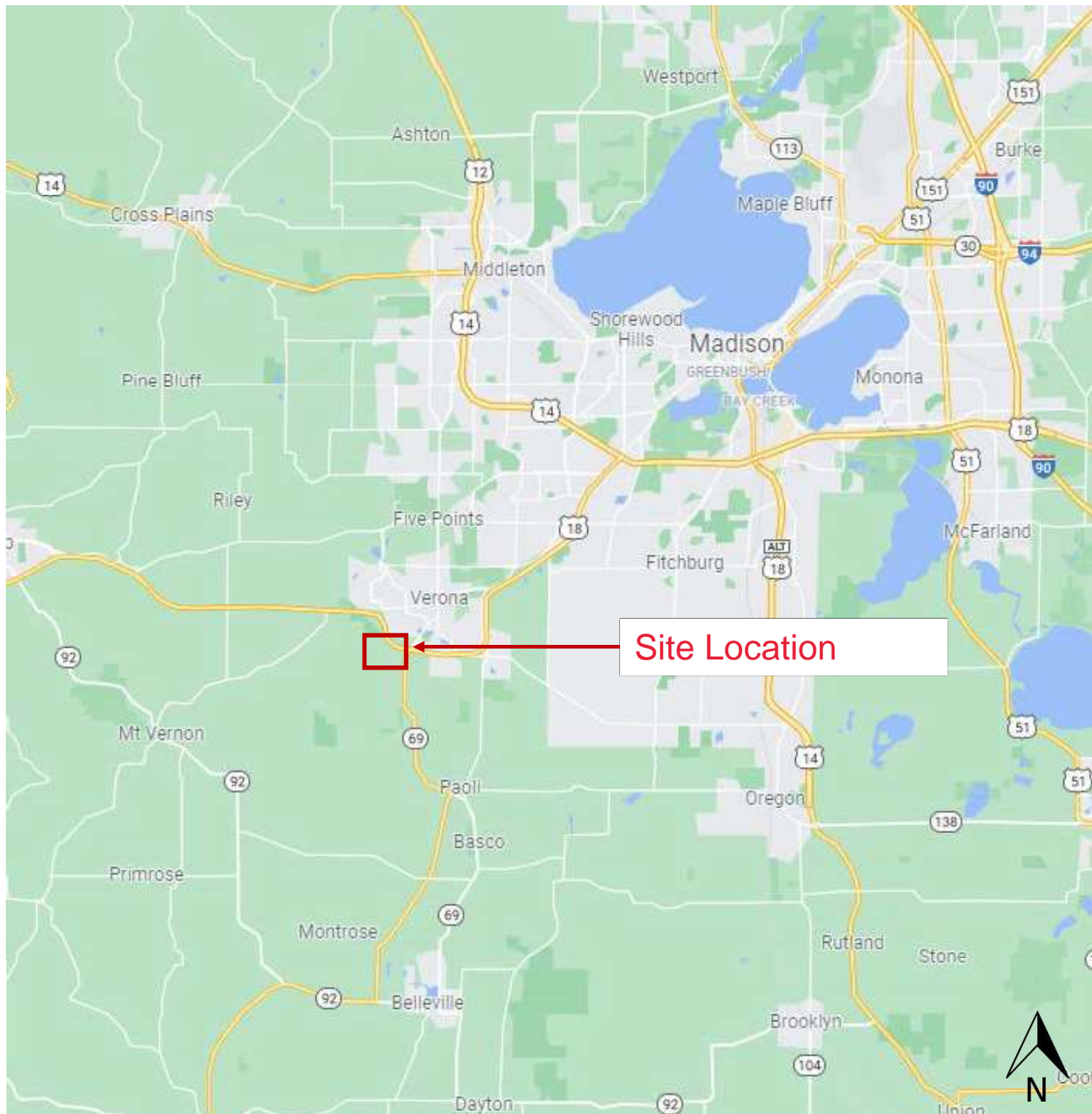
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00216-BJL

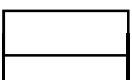
These wetlands are all separated from the closest mapped unnamed tributary to Badger Mill Creek located 600 feet east of the wetlands. There are no ditches, swales, pipes, or culverts that connect Wetlands 2, 3 and 4 to downstream jurisdictional waters. Wetland 4 is adjacent to Valley Road, so that area was reviewed in detail. The Digital Elevation Model (DEM) and hillshade layers of the National Regulatory Viewer do not show any discrete or confined features extending beyond Wetland 4 to the unnamed tributary to Badger Mill Creek. Wetlands 2, 3, and 4 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, Wetlands 2, 3 and 4 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. No field visit was conducted. Desktop review evaluation was conducted on February 26, 2025.
  - b. 7278 Valley Road, Verona, WI 53593, Helianthus Wetland Delineation Report, dated March 25, 2022
  - c. Google Earth aerial imagery 2000-2022, accessed February 26, 2025.
  - d. Mississippi Valley Division National Regulatory Viewer, DNR hillshade, Digital Elevation Model, topographic contours, Wisconsin Wetland Inventory, accessed February 26, 2025.

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



 2 MI

Source: Google Maps, 2021

FIGURE 1. LOCATION MAP



**Legal Description:**  
 (Based on a Report of Title issued by Knight Barry Title Services, LLC, No. 2107041 with a commitment date of November 10, 2021)

The Southwest 1/4 of the Southwest 1/4 of Section 21, T6N, R8E, in the Town of Verona, Dane County, Wisconsin.  
 The Southeast 1/4 of the Southwest 1/4 of Section 21, T6N, R8E, in the Town of Verona, Dane County, Wisconsin.  
 EXCEPT lands conveyed by Warranty Deed recorded on November 17, 1993, in Vol. 25482 of Records, Page 18, as Document No. 2543509.  
 The Southwest 1/4 of the Southeast 1/4 of Section 21, T6N, R8E, in the Town of Verona, Dane County, Wisconsin.  
 EXCEPT lands conveyed by Warranty Deed recorded on November 17, 1993, in Vol. 25482 of Records, Page 18, as Document No. 2543509, also EXCEPT lands conveyed by Warranty Deed recorded on February 9, 1995, in Vol. 29336 of Records, Page 54, as Document No. 2659832, also EXCEPT part lying Northerly of USH 18-151.  
 The Southeast 1/4 of the Southeast 1/4 of Section 21, T6N, R8E, in the Town of Verona, Dane County, Wisconsin, lying Northwesterly of the Northerly right of way of STH 69, EXCEPT lands conveyed by Warranty Deed recorded on November 17, 1993, in Vol. 25482 of Records, Page 18, as Document No. 2543509, also EXCEPT lands conveyed by Warranty Deed recorded on February 9, 1995, in Vol. 29336 of Records, Page 54, as Document No. 2659832, also EXCEPT lands conveyed by Award of Damages recorded on August 19, 2005, as Document No. 4097179, also EXCEPT part lying Northerly of USH 18-151.

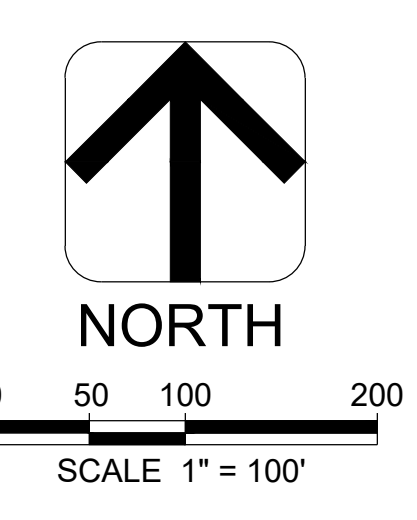
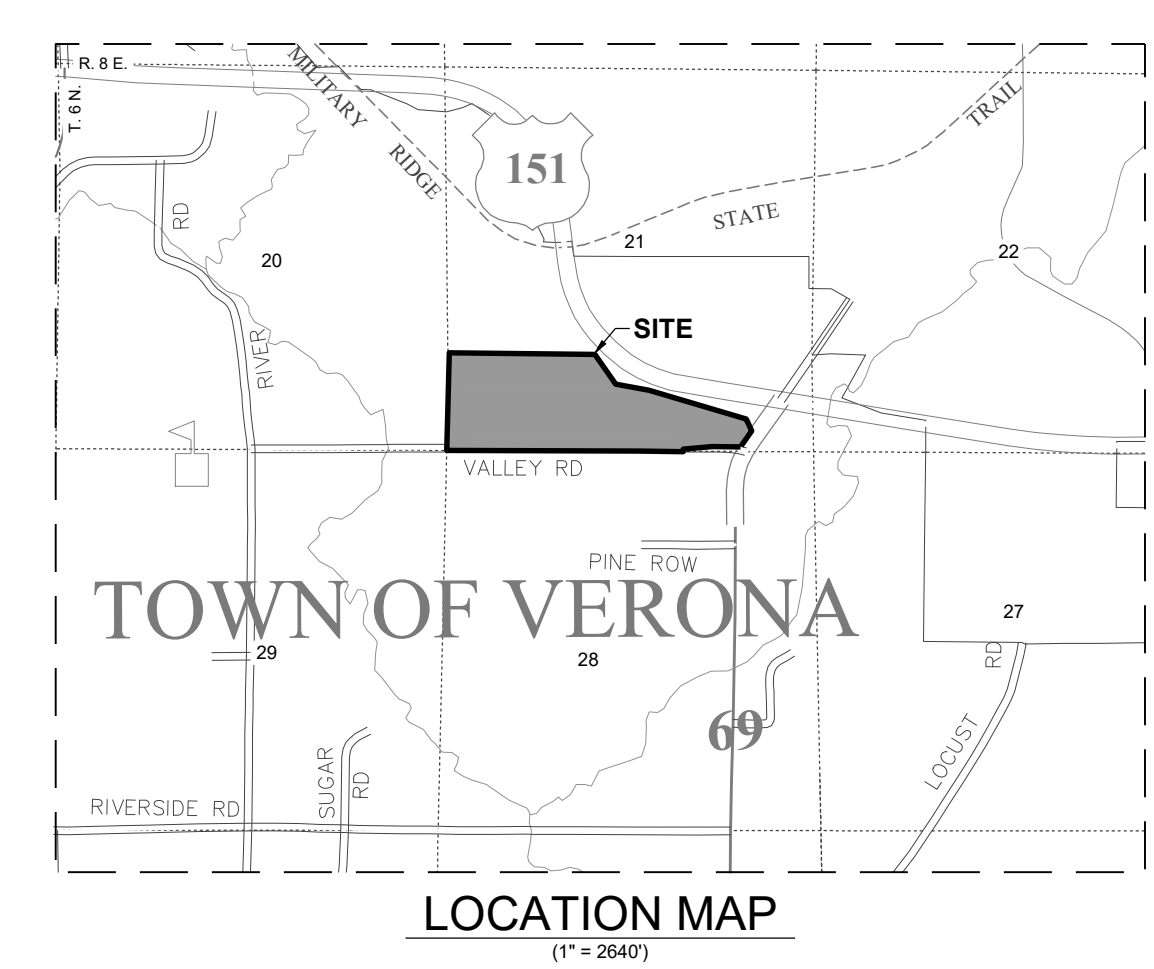
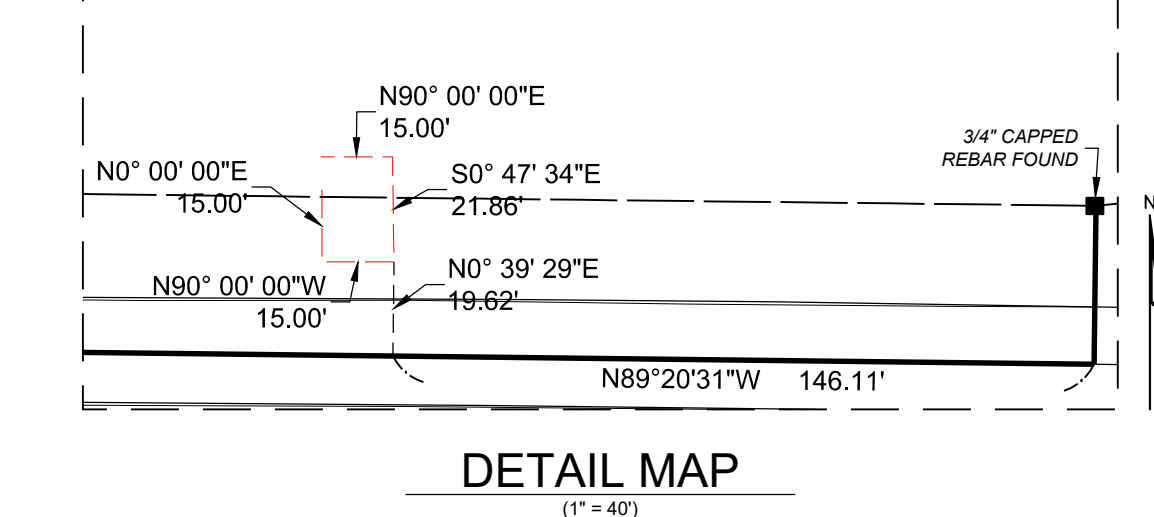
Tax Key Number: 062-0608-213-9000-7, 062-0608-213-8501-1, 062-0608-214-9180-0 and 062-0608-214-9710-0  
 Property Address: Vacant Land, Town of Verona, WI 53593

**Title Report Records:**  
 (The following were disclosed as records relating to the premises based on a Report of Title issued by Knight Barry Title Services, LLC, File #: 2107041 with a commitment date of November 10, 2021 at 8:00 AM)  
 Items 1, 5-8, 16, 11-18 Visible evidence shown on map; if any items 2-4, 9-10, are not survey related and therefore are intentionally omitted.

- Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date, as set forth on the Commitment for Title Insurance, and the Date of Policy, as set forth on the Policy.
- Rights or claims of parties in possession not shown by the Public Records.  
 Any encroachments, encumbrance, violation, variation, or adverse circumstance affecting Title that would be disclosed by an accurate and complete land survey of the Land.  
 Easements or claims of easements not shown by the Public Records.
- Any claim of adverse possession or prescriptive easement.
- Public or private rights, if any, in such portion of the Land as may be presently used, laid out, or dedicated in any manner whatsoever, for street, highway and/or alley purposes.
- Easement recorded as Document No. 990073.  
 THIS ITEM DOES NOT AFFECT SUBJECT PARCEL
- Access restrictions and other conditions in instrument recorded as Document No. 2543509.  
 THIS ITEM DOES AFFECT SUBJECT PARCEL AND IS PLOTTED HERON
- Easement recorded as Document No. 2584529.
- Easement Assignment recorded as Document No. 3282843.  
 THIS ITEM DOES NOT AFFECT SUBJECT PARCEL
- Access restrictions and other conditions in instrument recorded as Document No. 2659832.  
 THIS ITEM DOES NOT AFFECT SUBJECT PARCEL
- Easements, restrictions and other matters shown on the Plat of Transportation Project Plat No. 1201-04-22-4-01 recorded as Document No. 4043975.  
 THIS ITEM DOES AFFECT SUBJECT PARCEL AND IS PLOTTED HERON
- Award of Damages recorded as Document No. 4097179.  
 THIS ITEM DOES NOT AFFECT SUBJECT PARCEL

- Table A Items:**
- Monuments are as shown and described hereon.
  - Address for subject parcel: Vacant Land, Verona, WI 53593
  - The subject property lies in Zone X (Area with a 0.2% chance of 100-Year flood being equalled or exceeded in any given year), and Zone AE (Area with a Base Flood Elevation of 938 feet), per FEMA Map number 50023C0556G with and effective date of January 2nd, 2009, which has not been revised.
  - Gross land area: 97.230 acres or 4,235,320 sq. ft.
  - Elevations are referenced to the NAVD88 Datum in which the Southwest Corner of Section 21, T6N, R8E is the site benchmark and has an elevation of 926.39, as plotted hereon.
  - 7(a). Exterior building dimensions as shown hereon.  
 7(b)(1). Exterior footprints of all buildings as shown hereon.
  - Substantial features and improvements located on the premises are as shown hereon.
  - 11(b). Source information from plans and markings will be combined with observed evidence of utilities pursuant to section 5.E.iv. To develop a view of the underground utilities however, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyors assessment of the location of the utilities where additional or more detail information is required, the client is advised that excavation and for a private utility locate request may be necessary.
  - There are no proposed changes in the street right-of-way line or observed evidence of recent street or sidewalk construction or repairs at the time of survey.

- Notes:**
- Field work performed by Ayres Associates on November 9th, November 11th, November 15th - 17th, November 19th, November 22nd, December 7th - 8th.
  - Bearings are referenced to the West line of the Southwest Quarter of Section 21, T6N, R8E, Wisconsin County Coordinate System (WISCRS), Dane County, NAD83, the West line of the Southwest Quarter of Section 21, T6N, R8E has a recorded bearing of N01°28'46"E.
  - Elevations are based on the North American Vertical Datum of 1988 (NAVD88) the site benchmark is an aluminum cap set in concrete monumenting the Southwest Corner of Section 21 T6N R8E and has a published elevation of 926.39 feet.
  - Subsurface utilities and features shown on this map have been approximated by locating surficial features and appurtenances locating Diggers Hotline field markings an by reference to utility records and maps. Digger's Hotline Ticket nos. 2021460456, 2021460465.
  - Before excavation, appropriate utility companies should be contacted. For exact location of underground utilities, contact Diggers Hotline at 1.800.242.8511.
  - Contours and line work for United State Highway 51 right of way extracted from Dane County GIS.



LEGEND	
	SANITARY MANHOLE
	STORMWATER/SANITARY MANHOLE
	CATCH BASIN
	WATER VALVE
	GAS VALVE
	FIRE HYDRANT
	FLAG POLE
	GUY WIRE
	BOLLARD
	RECORDED AS
	PROPERTY LINE
	RW LINE
	RW CENTERLINE
	CHAINLINK FENCE
	UNDERGROUND TELEPHONE
	UNDERGROUND ELECTRIC
	UNDERGROUND SANITARY
	UNDERGROUND GAS
	UNDERGROUND STORM SEWER
	WATERMAIN
	ACCESS RESTRICTIONS
	CONCRETE
	ASPHALT
	FOUND MONUMENT (TYPE/SIZE NOTED)
	SET MONUMENT (TYPE/SIZE NOTED)
	FIBER OPTICS MANHOLE
	ELECTRIC MANHOLE
	GENERAL MANHOLE
	UTILITY POLE
	ELECTRIC PEDESTAL
	TELEPHONE PED
	CABLE TV PED
	ELECTRIC METER/GAS METER
	ELECTRIC PULLBOX
	LIGHT POLE
	SIGN
	YARD LIGHT

SURVEY BY	KC	BOOK NO							
DR BY	BFG	PROJ NO	76-0250.00						
CHK BY	NV	DATE	05/20/2019	NO	DATE	REVISION	NO	DATE	REVISION

SSM HEALTH  
 VERONA, WI



ALTA/ NSPS LAND TITLE SURVEY

# AJD Review Area is Limited to Wetlands 2, 3, and 4

**Wetland 1**  
UNDISTURBED WETLAND  
(26,666 SF)

**Wetland 2**  
UNDISTURBED WETLAND  
(870 SF)  
DISTURBED WETLAND  
(4,071 SF)

**Wetland 3**  
DISTURBED WETLAND  
(4,127 SF)

**Wetland 4**  
DISTURBED WETLAND (997 SF)  
REQUIRED BY CITY ROAD WIDENING

NOT FOR  
CONSTRUCTION

Revisions

SCHEMATIC DESIGN

SCOPE DOCUMENTS

Drawing Date

2/26/25

Verona Outpatient Center



7278 VALLEY ROAD,  
VERONA, WI 53593

Project No. SSM  
224051 HEALTH

Sheet Title

**WETLAND  
DISTURBANCE  
EXHIBIT**

Copyright © 2024 Kahler Slater, Inc. All rights reserved.

790 N Water Street, Suite 1700, Milwaukee, Wisconsin 53202  
Telephone 414.272.2000 Fax 414.272.2001

104 Shockoe Slip, Richmond, Virginia 23219  
Telephone 804.767.2500

722 Williamson Street, Madison, Wisconsin 53703  
Telephone 608.263.6300 Fax 608.263.6317

150 N Wacker Drive, Suite 1700, Chicago, Illinois 60606  
Telephone 312.789.4516

Sheet No.

**E1**

